Supreme Court, U.S.
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No. 10-338

IN THE

Supreme Court of the United States

DOMENIC TRICOME,
Plaintiff-Appellant-Petitioner,

—v.—

EBAY, INC.,
Defendant-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR REHEARING

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November 26, 2010

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FRANKS et al v. *FOOD INGREDIENTS INTERNATIONAL, INC. et al*, U.S. District Court, Eastern District of Pennsylvania; Case Number: 2:09-cv-03649-CDJ 4

TRICOME v. *EBAY, INC. et al*, U.S. District Court; Northern District of California, San Jose Division; Case Number: 5:10-cv-03214-LHK 1

PETITION FOR REHEARING

Petitioner Domenic Tricome respectfully requests rehearing of the Court's order dated 11/1/10, denying the petition for a writ of certiorari in this case. It is unusual for this Court to grant rehearing and grant plenary review. It is far more common for this Court to grant rehearing, and then grant certiorari; vacate the judgment below; and remand (a "GVR order") for consideration of the new information that follows. That would be the appropriate disposition in this case.

Due to the U.S. District Court, Northern District of California, San Jose Division not sending the Petitioner the necessary and required documents, the Petitioner only recently became aware of why the Respondent terminated the Petitioner's accounts, which eventually forced the severely, disabled Petitioner to sell his business for very little, causing the Petitioner to be out of money very soon. The Respondent changed their reason for terminating the Petitioner's accounts that the Respondent gave to the Petitioner's lawyer in June 2007 to several reasons, because the reason the Respondent had given would make them lose this lawsuit. In the Respondent's document titled "Case Management" dated 9/28/10 and filed in the U.S. District Court, Northern District of California, San Jose Division, Case Number 5:10-cv-03214-HRL, the Respondent almost completely throughout on pages 2 and 3 is either lying; is grossly negligent; or is both. The Respondent's reasons for terminating the Petitioner's accounts come down to one thing. The Respondent thought that the Petitioner was working for All the

Whey, Inc. The Petitioner was not working for All the Whey, Inc. on 5/30/07, the date the Respondent terminated the Petitioner's accounts. In February 2005, the Petitioner had notified the Respondent by email, fax and mail that the Petitioner left All the Whey, Inc. on 2/7/05, which was more than two years before the Respondent terminated the Petitioner's accounts. Further, the Petitioner reminded the Respondent of such on 5/4/07 by email and fax, 26 days before the Respondent's termination of the Petitioner's accounts, because the Respondent had emailed the Petitioner a related, false accusation. Please see Appendix A, page App. 1. This 5/4/07 Petitioner's email made everything normal between the parties, until the Respondent terminated the Petitioner's accounts on 5/30/07.

For the record, when the Petitioner ran All the Whey, Inc., All the Whey, Inc. had no negatives and no neutrals with the Respondent's system.

In the Respondent's termination email to the Petitioner, the Respondent stated, "This email serves as eBay's formal request that you cease any further communication with any employee or member of eBay management." So, until this lawsuit, the Petitioner could not communicate with the Respondent. Throughout this lawsuit, the Petitioner has asked the Respondent for proof of the reason of the termination of the accounts. Throughout, the Respondent replied by stating things like, "We will address that later."

The Respondent was wrongly awarded jurisdiction based on the Respondent's alleged defense. The Petitioner has just proved that the Respondent has no defense. The Petitioner has stated in all of the three courts that the Respondent

has no defense. Even though the Respondent provided no evidence of a defense, all of the three courts ruled in favor of the Respondent. Further, the Respondent was wrongly awarded jurisdiction based on the Respondent's lie that they have all the records needed for this case when they clearly do not. The Petitioner has all of the records. Still further, the Respondent's have misled all of the courts by not telling the courts that the Respondent's Counsel has to travel to the U.S. District Court, Northern District of California, San Jose Division almost like they would have to travel to the U.S. District Court, Eastern District of Pennsylvania.

Further relevant facts that were noted in the petition for writ of certiorari follow:

- Without any evidence, because there is none, the U.S. District Court, Eastern District of Pennsylvania wrongly ruled that the Petitioner is not as severely disabled as the Petitioner states.
- Without any evidence, because there is none, the U.S. District Court, Eastern District of Pennsylvania wrongly concluded the reason why the Petitioner started a company.
- The U.S. District Court, Eastern District of Pennsylvania ruled before the Petitioner could hire another lawyer, even though the U.S. District Court, Eastern District of Pennsylvania clearly implied that the Petitioner can hire a lawyer before the ruling.
- The U.S. District Court, Eastern District of Pennsylvania did not read a total of 97 documents in a total of nine faxes and mailings.

- The U.S. District Court, Eastern District of Pennsylvania stated in its opinion that it did not factor in the merits of the case, but it used the merits of the case to justify the change of venue.
- The U.S. District Court, Eastern District of Pennsylvania opinion states that this District Court did not believe that the Petitioner could not make money. The Petitioner has not made one cent since he sold the company on 7/31/08. Further, this District Court argued wrongly that all disabled people can work.
- The District Court Judge of the U.S. District Court, Eastern District of Pennsylvania did not recues himself from a second, simultaneously active Petitioner's case after being asked by the Petitioner. The case is 2:09-cv-03649-CDJ (Franks et al v. Food Ingredients International, Inc. et al).
- In the immediately above referenced case, the U.S. District Court, Eastern District of Pennsylvania stated in its opinion that a judge has to rule in favor of the Plaintiffs when evidence to the contrary is not presented, yet with such a condition, this District Court ruled for the Defendants.
- The U.S. District Court, Eastern District of Pennsylvania did not grant an injunction for the Petitioner, and the U.S. District Court, Eastern District of Pennsylvania did not in any way protect the Petitioner in the immediately above referenced case, which allowed the Defendants with their Defense Counsel to steal from the Petitioner's company's banks all of the company's money.

Due to the theft, the company founded by the Petitioner in 2002 with 2009 sales of over $6 million has to be closed; the Petitioner cannot afford a lawyer; and the Petitioner is about out of money. In the U.S. District Court, Eastern District of Pennsylvania opinion for this case before this Supreme Court, the opinion stated that the opinion was based on the Petitioner having a lawyer.

- The U.S. District Court, Eastern District of Pennsylvania ruled that a severely disabled person that cannot travel is not entitled to jurisdiction if a closed circuit TV is used. The reality of such a situation is that the situation prevents one to have their day in court, because human perception among other things is limited.
- The Third Circuit Court of Appeals did not consider the merits of the case, including two lawyers that stated that the District Court Judge of the U.S. District Court, Eastern District of Pennsylvania is in general not a good judge.

In this Supreme Court's 11/1/10 denial of the petition for writ of certiorari, the Court must be assuming that the U.S. District Court, Northern District of California, San Jose Division will change jurisdiction if warranted. Given the Petitioner's dire financial situation, waiting for the U.S. District Court, Northern District of California, San Jose Division or the Ninth Circuit Court of Appeals to change the jurisdiction is taking a chance that the Petitioner may pay for with his life. In that event, the Petitioner, his father due to the Petitioner being

named after his father, and the company the Petitioner founded will be permanently, forever defamed.

Even though the Respondent knows that the Petitioner did not receive most of the documents from the U.S. District Court, Northern District of California, San Jose Division on time, and when the Petitioner did get the documents, they were 60 to 90 days late, the Respondent is trying to have this lawsuit dismissed in the Respondent's document dated 9/28/10 titled "Defendant's Rule 26(f) Report with the District Court," page 2, paragraph F.

The Respondent has terminated hundreds, maybe thousands, of accounts with situations similar to that of the Petitioner.

CONCLUSION

The Court should grant the petition for rehearing; vacate the order denying certiorari; and enter an order that grants the petition for certiorari; vacates the portion of the U.S. District Court, Eastern District of Pennsylvania on jurisdiction; and remand the case to the Third Circuit Court of Appeals for consideration of the new information.

Respectfully submitted,

Dated: 11/26/10

Domenic Tricome

Domenic Tricome

CERTIFICATE OF COUNSEL (Pro Se)

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Dominic Tricome

APPENDIX A

SNPD NOTICE: eBay Registration Suspension - Seller Non-Performance - Related Account - domtricome@alumni.nd.edu

From: Domenic Tricome
Sent: Friday, May 04, 2007 6:49 PM
To: suspension@ebay.com; eBay Customer Support
Subject: Re: SNPD NOTICE: eBay Registration Suspension - Seller Non-Performance - Related Account - domtricome@alumni.nd.edu

Domenic Tricome
649 S. Henderson Rd., A508B
King of Prussia, PA 19406-3568
Phone: 610-265-6864
Fax. 610-265-8538

Fax Cover

5/4/07

To: Legal Dept. - 408-376-7514

From: Domenic Tricome

Pages (including this page): 1

Subject: EBay has not changed the contact information on an account.

To Whom It May Concern:

In 2/05, I emailed, faxed and wrote to eBay to dissociate me from a company that I helped found, All the Whey, username allthewhey. EBay has not done that. I included my Social Security card and license as eBay had requested. I have more than proved who I am, and followed eBay's rules. Today, you suspended me, because you suspended allthewhey.

I expect eBay to immediately rectify this situation that should have been taken care of over two years ago.

Domenic Tricome

----- Original Message -----
From: suspension@ebay.com
To: domtricome@alumni.nd.edu
Sent: Friday, May 04, 2007 4:46 PM
Subject: SNPD NOTICE: eBay Registration Suspension - Seller Non-Performance - Related Account domtricome@alumni.nd.edu

eBay sent this message to Domenic Tricome (dom_tr).
Your registered name is included to show this message originated from eBay. Learn more